

State of Colorado



Bill Ritter, Jr.
Governor

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING May 20, 2008

A public meeting of the State Personnel Board will be held on Tuesday, May 20, 2008, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604. The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by May 15, 2008.

I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

II. REQUESTS FOR RESIDENCY WAIVERS

May 1, 2008 Report on Residency Waivers

III. PENDING MATTERS

- A. Petition for Declaratory Order of Laura Taylor, State Personnel Board case number 2008D001.

IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Norma Smith v. Department of Human Services, Division of Disability Determination, State Personnel Board case number 2007B090.

Complainant, a technician, appealed her termination seeking reinstatement. After hearing, the ALJ determined that Complainant did not present evidence of intentional discrimination or a *prima facie* showing of discrimination based on age or disability, as she alleged in her appeal. In addition, the ALJ found that, while Respondent established by a preponderance of the evidence that Complainant had failed to perform competently under the January 2007 Corrective Action and had only a Needs Improvement rating for the quality of her work in the 2006-2007 review period, Respondent did not demonstrate by a preponderance of the evidence that Complainant's overall performance for purposes of the 2006-2007 review period was at an overall "Needs Improvement" level. Furthermore, affirming the disciplinary termination, the ALJ concluded that Respondent's action was arbitrary or capricious as to the assignment of discipline for leave usage and an overall "Needs Improvement" rating for the 2006-2007 review period, but not arbitrary,

capricious or contrary to rule or law for the remainder of the causes for discipline and the discipline imposed was within the range of reasonable alternatives.

V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

There are no Preliminary Recommendations of the Administrative Law Judges before the Board this month.

VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. Kit Carver v. Department of Revenue, Motor Carrier Services Division, State Personnel Board case number 2008B033 (April 7, 2008).

Complainant, a Port of Entry Officer, appealed his disciplinary termination by Respondent, seeking reinstatement, an award of back pay, and the substitution of a corrective action for the disciplinary action. After hearing, the ALJ determined that there was no dispute that Complainant committed the acts for which he was disciplined. The ALJ also found that Respondent's disciplinary action was not arbitrary, capricious, or contrary to rule or law because the fabrication of a doctor's note by a law enforcement officer meets the criteria of a flagrant act warranting immediate discipline, even when the employee has no prior disciplinary or corrective actions. Additionally, the ALJ found that it was not a violation of Director's Procedure 5-6 for Complainant's supervisor to ask Complainant for a written doctor's note for two consecutive days of requested sick leave, given that the circumstances indicated a possible abuse of sick leave time. Finally, the ALJ found that termination of employment was within the range of reasonable alternatives available to the Respondent because Complainant held a law enforcement position, and submitting an altered medical note was plainly unacceptable behavior for any employee, much less a law enforcement officer, who must exercise a high degree of discretion in his position and be able to consistently demonstrate good judgment in his choices.

No Designation of Record or Notice of Appeal has been filed.

VII. REVIEW OF THE MINUTES FROM THE APRIL 15, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS APRIL 15, 2008 PUBLIC MEETING:

- A. John Conte v. Department of Natural Resources, Division of Wildlife, Design Engineering Section, State Personnel Board case number 2008G004.

The Board voted to grant the Motion to Strike and to adopt the Amended Dismissal Order and make it an Order of the Board.

- B. Pervaiz K. Sulehria v. Department of Corrections, Division of Adult Parole, Community Corrections and Youthful Offender System, State Personnel Board case number 2007G095.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing based on the Board's findings that Complainant failed to show circumstances giving rise to an inference of unlawful discrimination and therefore did not establish a *prima facie* case of discrimination.

- C. Donald Wayne v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2008G055.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

- D. De'Edra Dangerfield v. Department of Labor and Employment, Department of Quarterly Census Employment Wages, State Personnel Board case number 2007S002.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Bobby Espinoza v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2008G009 (C).

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES, DPA

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Memorandum of Understanding between Colorado State Personnel Board and Division of Labor, Department of Labor & Employment

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the April 15, 2008 Executive Session
- C. Other Business

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NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

June 17, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
July 15, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
August 19, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
September 16, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
October 21, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
November 18, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
December 16, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
January 20, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
February 17, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
March 17, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
April 21, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
May 19, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
June 16, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604